

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Romero Analyst: Roger Lackey Bill Number: AB 1924

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 04-24-2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Enterprise Zones/Aerospace Training Competitiveness Improvement Program/Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 15, 2000.

X FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 15, 2000, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

Under the Government Code, this bill would require the Trade and Commerce Agency (TCA) to design, develop, and oversee the operation of a 36-month Aerospace Training Competitiveness Improvement Program within one or more designated enterprise zones.

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would provide a credit to a taxpayer equal to the amount paid or incurred during the taxable or income year for the overhead costs of training employees under terms of an Aerospace Training Competitiveness Improvement Program. The program must be provided for a taxpayer's specific business unit located within a designated enterprise zone.

This analysis will address the changes to the Government Code only as they impact the department.

SUMMARY OF AMENDMENT

The April 24, 2000, amendment added identical credit provisions to the PITL, specified that the employees must be employed within the enterprise zone, and limited the credit application to income attributable to the enterprise zone. In addition, the amendment extended the operative date to taxable and income years beginning before January 1, 2005, and subsequently, extended the repeal date of the credit provisions from December 1, 2004, to December 1, 2005.

The April 24 amendments also added legislative intent language and made changes to the Government Code that do not impact the department.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Legislative Director

Date

Johnnie Lou Rosas

5/3/00

The April 10, 2000, amendment added two requirements to qualify for the credit: First, all the taxpayer's employees must be covered by an employer-sponsored plan of health insurance. Second, the average weekly wage paid to nonmanagerial, nonsupervisory employees working for the taxpayer in the designated enterprise zone may not be less than the "state average weekly wage," as defined.

"State average weekly wage" is defined as the average weekly wage paid by employers to employees covered by unemployment insurance, as reported to the Employment Development Department for the four calendar quarters ending June 30th of the immediately preceding calendar year.

In addition, the April 10, 2000, amendment would provide that in the event a taxpayer fails to satisfy the requirements for the credit, any credit amount allowed would be recaptured in the taxpayer's first taxable or income year after the bill's operative date.

Except for the discussion in this analysis, the department's analysis of the bill as introduced February 15, 2000, still applies. The implementation considerations from the original analysis as well as new implementation and technical considerations and a revised revenue estimate are included below.

Implementation Considerations

This bill does not define the term "overhead costs," "covered," "employer-sponsored plan of health insurance," and "qualified taxpayer." The lack of clear definitions could lead to disputes between taxpayers and the department regarding the correct interpretation of these terms and, therefore, eligibility for the credit and the amount of the resulting credit. Since overhead costs can be defined as all administrative or executive costs incident to the conduct of a business, it would be helpful if the bill detailed those costs eligible for the credit. The author's staff has requested the attached Amendments 1, 2, 5, and 6 which would define the term "overhead costs." Other terms remain undefined.

This credit is limited to overhead costs of specific business units located in a designated economic development area, but the bill does not specify a criterion to determine when a specific business unit is considered to be located "in" an EDA for purposes of the credit.

Eligibility provisions for a tax credit should be codified in the R&TC, rather than in the Government Code.

Pursuant to provisions of the Government Code added by this bill, a credit would be provided for aerospace contractors or suppliers or both for costs incurred while providing employee training within the aerospace and defense industry. Since this bill would include suppliers of the aerospace industry, this credit could apply to businesses outside the aerospace industry. For example, an office supply company may provide writing implements and paper to a business that provides training for the aerospace industry. Under this bill, the office supply company could be considered to be an aerospace industry supplier and could be eligible for the credit.

The Government Code section added by this bill would require an entity claiming the credit under the R&TC provisions added by this bill to certify that the resulting credit shall be applied dollar-for-dollar against the overhead costs of the business unit located within the designated enterprise zone. The result of such "application" is not specified. If this provision is intended to deny a deduction for some portion of overhead costs associated with the expenditures that are the basis for the credit, this language does not accomplish that purpose.

This credit would be repealed on December 1, 2005, to allow fiscal year filers for taxable or income years beginning before January 1, 2005, but extending into the year 2005, to claim the credit for all the calendar months of the taxpayers' 2004/2005 fiscal year. However, the Aerospace Training Program under the Government Code is repealed on January 1, 2005. This inconsistency in dates may cause confusion over whether the credit is allowed to fiscal year filers based on costs paid or incurred during 2005 following repeal of the related Government Code provisions.

Although this bill provides language to recapture the credit from taxpayers that are found not to be eligible to take the credit, it specifies that "any credit amount allowed" would be recaptured. Recapture would be imposed regardless of whether the full credit amount allowed had been claimed by the taxpayer. This would result in the taxpayer being required to recapture unused carryover credit. The language also specifies that the credit would be recaptured in the taxpayer's first taxable or income year beginning after the act's operative date. Recapture is usually required in the year that the problem is discovered or in the year that the problem occurred but not a randomly selected year.

It is unclear whether a taxpayer in a trade or business within a designated zone must provide an employer-sponsored plan of insurance for all employees of the taxpayer regardless of the location where the employee is employed or only those employees employed in the designated zone.

Technical Considerations

This bill is drafted to provide a credit to taxpayers doing business in an "enterprise zone;" however, the bill's language uses the term "target area" and "targeted tax area," which are terms unrelated to enterprise zones. Amendments 3, 4, 7 and 8 would make the bill consistent in reference to the economic area the author intends to benefit.

Amendment 6 also makes a technical correction, to move the word "pursuant" to the correct location in a sentence.

Tax Revenue Estimate

Tax revenue estimate for the bill as introduced February 15, 2000, still applies. It was originally assumed that employers under the PITL would qualify.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1924
As Amended April 24, 2000

AMENDMENT 1

On page 4, line 3, after "(a)" insert:

(1)

AMENDMENT 2

On page 4, between lines 11 and 12, insert:

(2) For purposes of the section, "overhead costs" means those costs which would be allocable costs under Section 263A(a)(2)(B) of the Internal Revenue Code were those costs incurred in the production of property to which Section 263A applied.

AMENDMENT 3

On page 4, line 16, strikeout "target area" and insert:

designated enterprise zone

AMENDMENT 4

On page 4, line 22, strikeout "targeted tax area" and insert:

designated enterprise zone

AMENDMENT 5

On page 6, line 8, after "(a)" insert:

(1)

AMENDMENT 6

On page 6, strike lines 15 and 16, insert:

the Government Code, for training employees employed within the enterprise zone, pursuant to that section.

(2) For purposes of the section, "overhead costs" means those costs which would be allocable costs under Section 263A(a)(2)(B) of the Internal Revenue Code were those costs incurred in the production of property to which Section 263A applied.

AMENDMENT 7

On page 6, line 21, strikeout "target area" and insert:

designated enterprise zone

AMENDMENT 8

On page 6, line 27, strikeout "targeted tax area" and insert:

designated enterprise zone